

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2004-002397

07/08/2004

HONORABLE CATHY M. HOLT

CLERK OF THE COURT  
E. Schneider  
Deputy

FILED: 07/12/2004

ELLA BEESON

SCOTT I PALUMBO

v.

JOHN C OPIE, et al.

JAMES F POLESE

MINUTE ENTRY

After evidentiary hearing the Court took under advisement Plaintiff's Application for Attorneys' Fees. After considering the evidence and applicable law, the Court makes the following findings and orders:

Defendants are Plaintiff's treating physicians. This action was instituted solely because Defendants insisted that a court order issue before they would release Plaintiff's medical records to her attorneys. Plaintiff has asked for an award of her attorneys' fees incurred in bringing this action pursuant to A.R.S. Section 12-341.01(C).

Defendants' Notice of Privacy Practice provides that a patient may obtain a copy of their medical records by submitting a request in writing. (Exhibit 2). At the evidentiary hearing Defendant Dr. Opie acknowledged that there is no provision in Defendants' Notice of Privacy Practice that requires a court order to be issued before a patient can obtain a copy of their medical records.

By letter dated October 30, 2003, Plaintiff's attorneys submitted to Defendants a medical authorization signed by Plaintiff and requested a complete copy of Plaintiff's medical records of treatment by Defendants. (Exhibit 1). Prior to the filing of this action, and at the evidentiary hearing in this matter, Defendants alleged that they refused to provide a copy of the medical records without a court order because of Hippa concerns. (Exhibit 10). If the Defendants only reason for refusal to produce the medical records was a concern regarding Hippa compliance, Defendants could have provided Plaintiff or her attorneys with an alternate form of release. But

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the uncontroverted and credible testimony of two paralegals working with Plaintiff's attorneys clearly established another reason for Defendants' refusal to provide a copy of the medical records. Mary Lien, a paralegal working with Plaintiff's attorneys, testified that when she contacted Defendants' office the office manager asked if Defendant Dr. Opie was a "target defendant" and requested that Plaintiff's attorney speak to Dr. Opie. Barbara Grout, another paralegal working with Plaintiff's attorneys, subsequently called Eva at Dr. Opie's office to inquire about the medical records. Eva told Ms. Grout that Dr. Opie needed to know why Plaintiff's attorneys wanted the records. Eva acknowledged to Ms. Grout that the release was Hippa compliant but stated that Dr. Opie would not release the records unless he knew the issues and whether Plaintiff's attorneys were critical of his care.

Moreover, Defendants contention that they refused to release the medical records based upon Hippa concerns is belied by the fact that they agreed to produce a copy of Plaintiff's records without a court order after this suit was filed if the matter could be dismissed with both parties to bear their own attorneys' fees and costs. (Exhibit 13).

Pursuant to A.R.S. Section 12-341.01(C) the Court finds upon clear and convincing evidence that Defendants' claim or defense that a court order was necessary before they could provide a copy of Plaintiff's medical records to her attorneys constituted harassment, was groundless and was not made in good faith.

The Court further finds that the fees incurred were reasonable under the circumstances. Accordingly,

IT IS ORDERED granting Plaintiff's Application for Attorneys' Fees. Plaintiff shall submit a form of order.

IT IS FURTHER ORDERED sustaining Defendants' Opposition to Submittal of Documents.